Applicants: Steven D. Goedeke et al.
Serial No.: 09/731,178
Page 9

REMARKS

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeffrey D. Snell, (U.S. Patent No. 5,792,204). Applicant respectfully traverses this rejection.

Initially, it would appear, based upon the duplication of the previous Office Action language and the absence of any reference to the amended claim language and the continued reference to arguments relating to "official notice", that the Examiner has still not considered the merits of the claims as amended and the arguments presented with the earlier RCE filing. (The official notice issue was raised prior to filing the RCE yet remains the focus of the Office Action). As such, the claims filed with the RCE do not appear to have received a first office action on the merits and as such, the finality of this rejection is improper.

Claim 1 includes "a processor arrangement coupled to the speech recognition circuit . . . and in communication with the implanted medical device, the processor arrangement configured to receive data indicative of an implanted medical device state from the implanted medical device and automatically select the subset of commands as a function of the device state." This claim language has been present since filing the RCE; is not taught not suggested within Snell; not taught nor suggested within the supplementary references; and not addressed with specificity by the Examiner.

As indicated, Snell utilizes commercial voice recognition software to permit voice control of a medical device programmer. The Examiner cites Col. 5 line 67 to Col. 6, line 2 which states that a list of commands that are recognized by the system are stored within a memory. There is no teaching (as acknowledged by the Examiner) that Snell provides a subset of commands; furthermore there is no teaching that a state of the IMD determines which subset to utilize; nor is there any teaching that the IMD communicates its present state to the programmer and based upon this communicated state the subset of commands is automatically selected by the programmer.

The Examiner has stated that "it is old and notoriously well known to context have sensitive commands" and thus modification of Snell would be obvious "to avoid wasting user time by having her remember the precise available command words.

Applicants: Steven D. Goedeke et al.
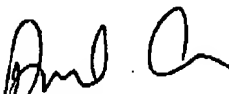Serial No.: 09/731,178
Page 10

Such a rejection is inappropriate for at least two reasons. First, the Examiner has taken claim elements out of context and failed to consider the claim as a whole. Second, the Examiner has condensed the claim to a "gist" or "thrust" and focused on that in lieu of considering the claims as a whole.

Thus, the inquiry is not whether speech recognition has ever been utilized to define different lists of recognized words, but rather would one of ordinary skill in the art have been motivated to modify a medical device programmer to include voice recognition capability, define subsets of commands, interrogate an IMD, determine an IMD state and automatically select a subset of commands based on the state of the IMD. No reference or combination of references teaches or suggests the invention as claimed.

Applicant respectfully asserts that the claims are in condition for allowance and requests notice of the same.

Respectfully submitted,

Date: __10/22/04__

Daniel G. Chapik
Registration No. 43,424
MEDTRONIC, INC.
Telephone: (763) 514-3066
Facsimile: (763) 514-6982
Customer No. 27581